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Letter dated 5 January 2005 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the Chairman of the Committee

I have the honour to transmit, enclosed herewith, the report of Serbia and Montenegro on the implementation of Security Council resolution 1540 (2004) (see annex).

(*Signed*) Nebojsa **Kaludjerovic**
Permanent Representative

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Annex to the letter dated 5 January 2005 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the Chairman of the Committee

Report of Serbia and Montenegro on the implementation of Security Council resolution 1540 (2004)

Serbia and Montenegro attaches great importance to arms export control and the prevention of WMD proliferation in all its aspects. Proceeding from its foreign policy priorities, such as accession to the "Partnership for Peace" Programme and the joining of the European Union, it has undertaken to carry out comprehensive reforms in defence and security sectors. One of the major tasks in this regard is to amend the existing legislation in the area of the production, trade and transfer of arms and military equipment and dual-use items.

In July 2004, the Council of Ministers of Serbia and Montenegro adopted the *Information on the Implementation of UNSC Resolution 1540 and Serbia and Montenegro's Obligations under the Resolution*. Subsequently, meetings have been held between the competent departments of the member States of the state union of Serbia and Montenegro, aimed at implementing the resolution and fulfiling the country's obligations.

Implementation of International Treaties on Weapons of Mass Destruction

Although a single subject of international law, Serbia and Montenegro is very specific constitutionally: under its Constitutional Charter, its member States, i.e. their government agencies are responsible for the fulfilment of most of its international legal obligations. The control over the implementation of international legal obligations is carried out by the member States. Likewise, these agencies impose sanctions against those who fail to fulfil the obligations and enforce the laws of the Republic of Serbia and the Republic of Montenegro on customs, border, sanitary, veterinary and health controls.

As for border control, certain characteristics apply. Border control in Montenegro is carried out by the Ministry of Internal Affairs of the Republic; in Serbia the control outside inhabited areas and border crossings is exercised by the military, while border crossings are controlled by the Ministry of Internal Affairs of the Republic, which prevents illegal border crossings and violations of the border area regime. Arrangements are being made in the Republic of Serbia, however, for the military to cede control to the police, but time and money will be needed before they are complete.

Arms Export Controls

By its Conclusion of February 2004, the Council of Ministers of Serbia and Montenegro decided that the Ministry of International Economic Cooperation prepare in collaboration with other relevant departments a draft Law on Foreign Trade in Arms, Military Equipment and Dual-Use Items. The Law, drafted in accordance with international standards, provides for the manner and conditions of trade, transport, transfer, brokering, provision of services, issuance of licences, authorization of competent agencies to enforce the Law, monitoring and control.

The list of controlled arms, military equipment and dual-purpose goods is defined in accordance with the EU Code of Conduct on Arms Export and the EU Council Regulation of the regime for the control of exports of dual-use items and technology and in agreement with the Wassenaar Arrangement, Missile Technology Control Regime (MTCR), Nuclear Suppliers Group (NSG), Australia Group and the Chemical Weapons Convention (CWC).

The procedure of the adoption of the draft Law is in its final stage: the Governments of the Republic of Montenegro and the Republic of Serbia have approved the draft and the Law is expected to be adopted by the Assembly of Serbia and Montenegro in the future.

Serbia and Montenegro as a Party to WMD Non-Proliferation Instruments

Serbia and Montenegro is a Party to major WMD non-proliferation instruments:

1. **Treaty on the Non-Proliferation of Nuclear Weapons – NPT**

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was signed by the Socialist Federal Republic of Yugoslavia in 1968 and ratified in 1970 on which occasion the Government made a Statement, explaining its interpretation of the essence and the importance of the Treaty.

The Federal Republic of Yugoslavia assumed the rights and obligations under this Treaty by the Successor Statement of August 2002.

2. **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction (BWC)**

The Socialist Federal Republic of Yugoslavia acceded to the Biological Weapons Convention (BWC) in 1972 and ratified it in 1973. In the Successor Statement of June 2001, the Federal Republic of Yugoslavia assumed the rights and obligations under this Convention.

3. **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (CWC)**

Following the accession of the Federal Republic of Yugoslavia to the Chemical Weapons Convention (CWC) in May 2000, the Federal Government, in fulfilling the obligations of the country under the Convention, established a National Commission for the implementation of the Convention, i.e. for cooperation with the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague, within which the most important part is the annual submission of declarations and acceptance of international inspection. A new National Commission has been set up.

Pursuant to the provisions of the Convention, in September 2003 Serbia and Montenegro destroyed, with the financial assistance of the United States, the equipment for the production of chemical weapons, which was noted in the report of the Technical Secretariat submitted to the 34th Meeting of the OPCW Executive Council.

A draft CWC Implementation Law is being prepared, the adoption of which is one of the obligations of Serbia and Montenegro under the CWC.

MISSILE TECHNOLOGY CONTROL REGIME – (MTCR)

Although not a MTCR party, Serbia and Montenegro has accepted the International Code of Conduct against Ballistic Missile Proliferation (ICOC) at the MTCR International Conference held at The Hague in November 2002.

Since 2002, Serbia and Montenegro has maintained regular communications with the MTCR Chairman who visited Belgrade several times and met representatives of competent departments of the state union and its member States.

Proceeding from the decision of the Council of Ministers of Serbia and Montenegro of February 2004, the Ministry of Foreign Affairs submitted to the MTCR Chairman a Declaration by which Serbia and Montenegro unilaterally undertook to abide in good faith by MTCR documents *Equipment, Software and Technology* of 30 May 2003 and *Guidelines for Sensitive Missile Relevant Transfers* of 7 January 1993.

Operative paragraph 1 of UNSC resolution 1540

The draft Law on Foreign Trade in Arms, Military Equipment and Dual-Use Items (Article 5) provides for prohibitions in respect of non-State actors and reads as follows:

"Foreign trade, transport, transfer, possession or use of nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, shall be prohibited to any non-State actor".

Operative paragraph 2 of UNSC resolution 1540

National laws on the implementation of operative paragraph 2 which prohibit non-State actors to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempt to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them.

The Criminal Laws of the Republic of Serbia and the Republic of Montenegro contain no provisions on WMD proliferation offences[1]. The offences are contained in the provisions of the Criminal Code of the Federal Republic of Yugoslavia, listed below, which continues in force:

- Article 125 – "He/she who sends or transfers to the territory of the FRY armed groups, terrorists, spies, saboteurs, arms, explosives, toxins, equipment, ammunition or other material for committing a criminal offence under this Chapter shall be punished with 1 to 10 years in prison";

- Article 132 – "He/she who sends or transfers to the territory of the FRY armed groups, terrorists, spies, saboteurs, arms, explosives, toxins, equipment, ammunition or other material for committing a criminal offence under this Chapter shall be punished with 1 to 10 years in prison";

- Article 137 – "He/she who sends or transfers to the territory of the FRY armed groups, terrorists, spies, saboteurs, arms, explosives, toxins, equipment, ammunition or other material for committing a criminal offence under this Chapter shall be punished with 1 to 10 years in prison";

- Article 138 – "He/she who prepares commission of a criminal offence (Article 18, paragraph 3) under Articles 114 – 116, Articles 121 – 127 and Article 128, paragraphs 1 and 2, of this Law shall be punished with at least 3 years in prison";

- Article 155a – "(1) He/she who, with intent to bring harm to a foreign country, liberation movement or an international organization, abducts a person or commits any other violence, causes an explosion or a fire or effects, through a generally dangerous action or by a generally dangerous means, a threat to human

[1] All Federal Laws adopted both in the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia remained in force after the establishment of the state union of Serbia and Montenegro; their enforcement, however, was transferred onto the competent agencies of the union member-States.

life and property of great value shall be punished with at least 1 year in prison. (2) If the commission of the offence under paragraph 1 of this Article has resulted in the death of one or more persons, the perpetrator shall be punished with at least 5 years in prison. (3) If, in committing the offence under paragraph 1 of this Article, the perpetrator has taken a human life with intent, he/she shall be punished with 10 to 40 years in imprison. (4) Prosecution of the criminal offence under this Article shall be undertaken upon approval by the Federal State Prosecutor";

- Article 247a – "(1) He/she who, by force or threat, commission of a criminal offence or in another way, illegally acquires, possesses, uses, transports, delivers to another person nuclear materials or enables another person to be in possession thereof shall be punished with up to 3 years in prison. (2) He/she who, by acts under paragraph 1 of this Article, causes a threat to human life or property of considerable size shall be punished with 6 months to 5 years in prison. (3) If the commission of an offence under paragraphs 1 and 2 of this Article results in the death of one or more persons or property damage of large proportion, the perpetrator shall be punished with at least 3 years in prison. (4) If the offence under paragraph 2 of this Article has been committed without intent, the perpetrator shall be punished with up to 3 years in prison. (5) If the commission of an offence under paragraph 4 of this Article results in the death of more persons or damage of large proportion, the perpetrator shall be punished with 1 to 8 years in prison".

- Article 247b – "(1) He/she who, by serious threat to use nuclear material, threatens the security of people shall be punished with 6 months to 5 years in prison. (2) He/she who, with intent to coerce a physical or legal person, international organization or a State to act or omit to act in a certain way, threatens to use nuclear material to bring in jeopardy or harm human life or property of large proportion shall be punished with 1 to 10 years in prison. (3) If the commission of an offence under paragraph 2 of this Article results in the death of one or more persons or property damage of large proportion, the perpetrator shall be punished with at least 3 years in prison".

- Article 248 – "He/she who, in violation of the Federal Regulation on Trade in Explosive or Inflammable Materials, delivers for transport by means of public transportation explosive or inflammable materials or transports such materials himself/herself by using means of public transportation shall be punished with up to 1 year in prison".

Operative paragraph 3 of UNSC resolution 1540

Measures of member-States regulating the implementation of operative paragraph 3 – domestic controls to prevent the proliferation of nuclear, chemical or biological weapons and their means of delivery.

The following regulations concerning the production, use, storage and transport of dangerous goods are in force in the Republic of Serbia and the Republic of Montenegro[2]:

- Law on the Crossing of the State Border and the Movement in the Border Area, *Official Gazette of the SFRY*, Nos: 34/79, 56/80 and 53/85 and the *Official Gazette of the FRY*, Nos. 24/94 and 28/96;

- Law on the Transport of Dangerous Goods, *Official Gazette of the SFRY*, No. 27/90 and the *Official Gazette of the FRY*, No. 28/96;

[2] All Federal Laws adopted both in the Socialist Federal Republic of Yugoslavia and the Federal Republic of Yugoslavia remained in force after the establishment of the state union of Serbia and Montenegro; their enforcement, however, was transferred onto the competent agencies of the union member-States.

- Law on the Production and Trade in Arms and Military Equipment, *Official Gazette of the FRY*, No. 41/96;

- Law on Explosive Materials, Inflammable Liquids and Gases, *Official Gazette of the Socialistic Republic of Montenegro*, Nos. 44/76, 49/79, 34/86, 11/88 and 29/89;

- Law on the Transport of Explosive Materials, *Official Gazette of the SFRY*, No. 30/85;

- Regulation on the Transport of Arms and Military Equipment, *Official Gazette of the FRY*, No. 49/97;

- Rules on the Manner of Transport of Dangerous Goods in Road Traffic, *Official Gazette of the SFRY*, No. 82/90;

- Rules on the Manner of Transport of Dangerous Goods in Maritime Traffic and in Traffic on Inland Waterways, *Official Gazette of the FRY*, No. 12/97;

- Law on the Protection of the Population against Infectious Diseases that Pose a Threat to the Entire Country, *Official Gazette of the FRY*, Nos. 46/96, 12/02, 18/02 and 31/02.

- Law on Environmental Protection, *Official Gazette of the FRY*, Nos. 66/91 and 83/92;

- Customs Law of the Republic of Serbia, *Official Journal of the Republic of Serbia*, Nos. 7/02, 38/02, 72/02 and 21/03, and the Customs Law of the Republic of Montenegro, *Official Gazette of the Republic of Montenegro*, No. 73/03;

- Law on Foreign Trade, *Official Gazette of the FRY*, Nos. 46/92, 49/92 and 16/93;

- Rules on Space, Premises, Technical Equipment and the Manner of Carrying Out Counter-Terrorism Inspections at Airports, *Official Gazette of the FRY*, No. 13/00;

- Rules on the Manner of Seizure of Cold and Fire Arms and Ammunition and the Search of Persons and Baggage in Public Air Transport, *Official Gazette of the FRY*, No. 13/00.

Operative paragraph 3g of UNSC resolution 1540

The Law on the Prevention of Money Laundering, *Official Gazette of the FRY*, No. 53/01 provides for measures and actions to be applied by all banks and other financial institutions, postal savings banks, the National Bank, Accounts and Payments Agency, insurance organizations, stock exchanges, brokers and all other entities dealing with monetary transactions. Violations of this Law are punishable with high fines and imprisonment (1 to 8 years).

The control, production and trade in explosives, arms and ammunition fall within the competence of the Ministries of Internal Affairs of the Republic of Serbia and the Republic of Montenegro. The Ministries of Health of the Republic of Serbia and the Republic of Montenegro control the production and trade in precursors and toxins, while the Ministries of Environmental Protection control the management of chemicals.

* * *

Serbia and Montenegro expresses its readiness to fully implement UNSC resolution 1540 (2004) and other international obligations with respect to questions of non-proliferation and to cooperate with the United Nations and other international organizations, at regional as well as at bilateral level.

Effective international expert and technical assistance, as well as a possibility to exchange legislative, legal and administrative experience in the field of non-proliferation would be most welcome and would make it possible for Serbia and Montenegro to pursue the above-mentioned goals more effectively.